

**THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**VEREIT, Inc.,**

**Plaintiff,**

**v.**

**Nicholas S. Schorsch, Peter M. Budko,  
William M. Kahane, and Edward M. Weil,**

**Defendants.**

Civil Action No. 17-cv-6546

**DEFENDANTS' RESPONSE TO VEREIT'S MOTION FOR CLARIFICATION**

Defendants Nicholas S. Schorsch, Peter M. Budko, William M. Kahane, and Edward M. Weil (collectively, the "Individuals"), by and through their undersigned counsel, hereby submit this response to VEREIT's Motion for Clarification of the Court's July 12, 2018 Order regarding the Individuals' Interrogatory No. 16 served on VEREIT.

The Individuals' original interrogatory sought "any contracts that VEREIT entered into between January 2014 and August 29, 2017, that were negotiated in New York, executed in New York, contained a New York choice of law and/or New York forum provision, and/or required notice under the contract to be sent to VEREIT's New York office." (Dkt. No. 50-1 at 8). VEREIT refused, and in response to the Individuals' Motion to Compel, the Court ordered VEREIT to identify all contracts entered into during the relevant time period, so that the Individuals could review a sampling of those contracts.

In light of the facts and arguments VEREIT raised in its Motion, the Individuals recognize the potential burden VEREIT would face if required to identify "all contracts" made between January 2014 and August 29, 2017. VEREIT claims that its primary business of

buying, selling, and leasing commercial real estate requires it to enter into thousands of contracts each year, including leases, purchase agreements, disposition contracts, property management contracts, appraisal contracts, sublease agreements, etc. The Individuals agree that the bulk of local property-level contracts like those described above are not relevant to the determination of VEREIT's principal place of business.

In order to aid the discussion at the hearing currently scheduled for July 23, 2018, the Individuals propose a compromise whereby VEREIT would list all contracts (without being required to produce the actual contracts) entered into between January 1, 2017 and September 15, 2017, that were negotiated in New York, executed in New York, contained a New York choice of law and/or New York forum provision, and/or required notice under the contract to be sent to VEREIT's New York office, *other than* VEREIT's individual property-related real estate contracts. This compromise will reduce the burden to VEREIT while still providing relevant and proportionate information to facilitate the jurisdictional discovery process.

Dated: July 19, 2018

Respectfully submitted,

/s/ Robin L. Cohen

Robin L. Cohen

New York Bar No.: 2254019

[rcohen@mckoolsmith.com](mailto:rcohen@mckoolsmith.com)

Natasha Romagnoli

New York Bar No. 3040334

[nromagnoli@mckoolsmith.com](mailto:nromagnoli@mckoolsmith.com)

**McKool Smith, P.C.**

One Bryant Park, 47<sup>th</sup> Floor

New York, New York 10036

Telephone: (212) 402-9400

Facsimile: (212) 402-9444

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on July 19, 2018.

/s/ Natasha Romagnoli